IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 165 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

K S LOKHANDWALA FAMILY TRUST

Appearance:

MR MH JOSHI FOR MR MANISH R BHATT for Applicant.

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 07/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 The Income Tax Appellate Tribunal has referred the following question at the instance of the Commissioner :

"Whether, the Appellate Tribunal is right in law and on facts in directing the I.T.O. to assess the trust in a substantive status as against on a protective basis assessed by the Income-tax Officer ?"

2 We have heard Mr.M.H.Joshi for the applicant-revenue. Though served none appears for the respondent-assessee. Our attention has been invited by Mr.Joshi to a decision dated 20/09/2001 in Income Tax Reference No. 113 of 1987 rendered between the same parties. In the said decision it has been stated as under.

3 The assessee is a trust. The assessment of the assessee-trust was computed on protective basis and it was held that the income was to be assessed substantively in the hands of one Shri Faridahmed Abdulsamad, the Managing Trustee of the trust. The C.I.T.(Appeals) and the Tribunal held that the assessee-trust had to be assessed on substantive basis and not the Managing Trustee.

4 In the case of the Managing Trustee in Income Tax Reference No. 202 of 1986 on 13th August,2001, we have declined to answer the question raised in that reference in view of the facts not being clear in the said reference. For the same reasons we decline to answer the question referred to us in the present reference which is identical in terms with the said reference.

5 The reference is disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah,J) (D.A.Mehta, J)

m.m.bhatt